

**OFFICE OF STATE TREASURER  
SAFE DIVISION  
CHAPTER 892-X-1  
GENERAL INSTRUCTIONS**

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**892-X-1-.01 Purpose.**

These rules establish general instructions for the administration of the Security for Alabama Funds Enhancement, or SAFE Program, which is encompassed in Title 41, Chapter 14A, Code of Alabama 1975, as amended. These rules are approved and adopted by the SAFE Board of Directors and are in compliance with the Alabama Administrative Procedures Act. These rules are not to be considered all inclusive of the actions and/or responsibilities required by a QPD or Custodian under the law nor do they include all statutes. Readers are advised they should read all information contained in the Appendix and in the law to obtain a fuller understanding of what is required of them under the SAFE Program.

Author:	Daria S. Story, SAFE Division, Office of State Treasurer
Authority:	Sections 41-14A-1, et seq. <u>Code of Alabama 1975</u> , as amended.
History:	May 2, 2001; Amended: October 24, 2002

## **892-X-1-.02 Definitions.**

For the purpose of these general instructions, in addition to the other terms as defined in the SAFE Act, the following terms are defined and shall have such meanings given thereto below whether or not such terms appear as capitalized in these general instructions:

- (1) “Eligible Collateral” means the types of securities or investment instruments described in Section 41-14-35, Code of Alabama 1975, as amended, designated as eligible collateral for public deposits.
- (2) “Collateral Pledging Level” or “Collateral Pledging Requirement” means the percentage of collateral required to be pledged by a QPD as determined in accordance with the SAFE rules.
- (3) “Covered Public Entity” means the various governmental units of the state, counties, municipalities, and other public corporations or officials subject to the provisions of the SAFE Program.
- (4) “Letters of Credit or “LOC” means irrevocable, unconditional letters of credit issued by a Federal Home Loan Bank to the Treasurer in order to secure the public deposits of any QPD, to the extent permitted in accordance with the provisions of this Chapter.
- (5) “Loss Payment Fund” means the funds that shall be dispersed as necessary to pay losses to public depositors and for other purposes.
- (6) “Minimum Collateral” means the minimum collateral necessary to collateralize public deposits and to remain active in the SAFE Program.
- (7) “Nominating authority” means either the Alabama Bankers Association, the League of Municipalities, or the Association of County Commissions which are authorized under the SAFE law to submit nominations to fill a vacancy on the SAFE Board of Directors
- (8) “Public Deposits” means funds of any covered public entity or covered public official deposited in a bank or financial institution, such as time deposit accounts, demand deposit accounts, and certificates of deposit. Funds not defined as public deposits include, but are not limited to, bonds, notes, money market mutual funds, repurchase agreements, and similar instruments.
- (9) “Qualified Public Depository” or “QPD” means any bank or financial institution that meets all the requirements of the SAFE Program and has been designated by the Treasurer to receive and hold Public Deposits.
- (10) "Recurrence" means an additional occurrence of an infraction within a period of one year from the date of the QPD's or Custodian's written response to the initial infraction.
- (11) “Required Collateral” means that Eligible Collateral which is required to be pledged by a QPD (or, in the case of Federal Home Loan Bank Letters of Credit, issued to the Treasurer, as beneficiary) in order to satisfy the QPD’s Collateral-Pledging Requirement.
- (12) “SAFE Board of Directors” or “SAFE Board” means the Board of Directors of the SAFE program. The Treasurer shall serve as Chairman of the eight-member board responsible for managing the sufficiency of the SAFE Program. Other members include the Superintendent of Banks, a representative of the Association of County Commissions, a representative of the League of Municipalities, and four representatives of the financial industry.
- (13) “SAFE Program” means the Security for Alabama Funds Enhancement Program encompassed in Title 41, Chapter 14A, Code of Alabama 1975, as amended, to

provide a uniform program for public fund deposits in the state with Qualifying Public Depositories.

- (14) "Treasurer" means the State Treasurer of the State of Alabama, or the designee of the State Treasurer.
- (15) "Treasurer Designated Custodian" means any bank or financial institution that meets all the requirements of the SAFE Program, that has been designated by the Treasurer, and serves as a repository for Pledged Collateral, the proceeds of a draw upon a LOC or the proceeds from the sale of Pledged Collateral.

Author: Daria S. Story, SAFE Division, Office of State Treasurer

Authority: Sections 41-14A-1, et seq, 41-14-35. Code of Alabama 1975, as amended.

History: May 2, 2001; Amended: February 27, 2004

#### **892-X-1-.03 Designation as a QPD.**

All public depositors shall place their public deposits with one or more QPDs. To become a QPD, a bank or savings institution must comply with all of the following requirements:

- (1) Be organized and existing under the laws of the state of Alabama, any other state of the United States, or the United States.
- (2) Be authorized pursuant to the laws of this state or the United States to conduct, and is conducting, the business of making loans and taking deposits in this state.
- (3) Have deposit insurance under the provision of the Federal Deposit Insurance Act, as amended, 12 U.S.C. §§ 1811 et seq.
- (4) Execute a Contingent Liability Agreement, Authorized Representative and Signature Certification, Collateral Agreement(s) and other necessary forms prescribed by the SAFE Board as detailed in the Appendix.
- (5) Submit, with the documents from (4) above, confirmation that minimum required collateral of eligible securities with a market value of either \$100,000 or required pledging level (whichever is greater) has been pledged to the State Treasurer.
- (6) Have received certification as a QPD from the Treasurer.

Author: Daria S. Story, SAFE Division, Office of State Treasurer

Authority: Sections 41-14A-2 thru 41-14A-6, 41-14A-8 and 41-14A-9, Code of Alabama 1975, as amended.

History: May 2, 2001

#### **892-X-1-. 04 Collateral Pledging Levels.**

- (1) The financial condition of each QPD shall be reviewed to determine Collateral Pledging Levels for entry and continued participation in the SAFE Program. The review shall be for the purposes of the SAFE Program only and shall be used exclusively for the Program. The review shall include:
  - (a) An independent financial condition evaluation from a nationally recognized service, published quarterly;
  - (b) Other pertinent information relating to the overall financial condition of the QPD.
- (2) Each QPD shall pledge to the Treasurer Eligible Collateral equal to or in excess of its Required Collateral. One of the following Collateral Pledging Levels shall be used in determining Required Collateral:
  - (a) 85 -percent of the net average daily ledger balance of public deposits if the QPD maintains an independent financial evaluation of 70 or more.

- (b) 95 -percent of the net average daily ledger balance of public deposits if the QPD maintains an independent financial evaluation of 20 – 69.
  - (c) 105 -percent of the net average daily ledger balance of public deposits if the QPD maintains an independent financial evaluation of 10-19.
  - (d) 125 -percent of the net average daily ledger balance of public deposits if the QPD maintains an independent financial evaluation below 10.-
  - (e) 150 -percent of an established maximum amount of public deposits may be required if a QPD experiences significant financial deterioration or at Board discretion.
  - (f) 100 percent of the net average daily ledger balance of public deposits in the case of a newly established bank. This pledging level will be updated upon receipt of first financial evaluation.
  - (g) 5 percentage points will be added to any of the above levels if the QPD exhibits one or both of the following conditions:
    - 1. Net average daily ledger balance of public deposits exceeds Tier 1 capital;
    - 2. Net average monthly ledger balance of public deposits comprises 20% or more of total public deposits held in all QPD's.
  - (i) A QPD may be required to pledge at a higher level for repeated violations of the SAFE Program provisions and rules upon the discretion of the Board.
  - (j) Minimum Required Collateral of \$100,000.
- (3) If a QPD maintains an independent financial evaluation below 10, the following actions may be deemed appropriate:
- (a) Additional monthly reporting, including financial information and a listing of all public deposits;
  - (b) Collateral safekept in a Treasurer-Designated Custodian.
- (4) The SAFE Board shall review, monitor, and modify these guidelines as necessary to meet the changing needs of the SAFE Program. The Treasurer shall notify each QPD of any changes as they occur.

Author: Daria S. Story, SAFE Division, Office of State Treasurer  
 Authority: Sections 41-14A-5 and 41-14A-6, Code of Alabama 1975, as amended.  
 History: May 2, 2001; Amended: October 24, 2002; February 27, 2004

#### **892-X-1-. 05 Maintaining Active Status.**

- (1) A QPD may maintain active status in the SAFE Program without holding public deposits. Active status will allow the depository to have the necessary paperwork in good order to accept public deposits upon request.
- (2) The Contingent Liability Agreement, Collateral Agreement(s), Federal Home Loan Bank Application for Approval and Agreement Regarding Use (if applicable), Required Collateral, and reporting requirements shall remain in effect.
- (3) Minimum collateral maintained shall be \$100,000 of Eligible Collateral.

Author: Daria S. Story, SAFE Division, Office of State Treasurer  
 Authority: Sections 41-14A-6, Code of Alabama 1975, as amended.  
 History: May 2, 2001; Amended: October 24, 2002; February 27, 2004

#### **892-X-1-. 06 Valuation of Collateral.**

- (1) The QPD shall value its collateral, other than Letters of Credit and cash proceeds from any draw on a Letter of Credit, in the following manner:
  - (a) Use a nationally recognized source.
  - (b) Use market price, quality ratings, and pay-down factors on or after the 25<sup>th</sup> calendar day in the reported month and before the 1<sup>st</sup> calendar day of the following month.
- (2) The Treasurer may elect to value pledged collateral, other than Letters of Credit, through a nationally recognized source as of the last business day of the month. The Treasurer shall recognize the lower of the two prices.
- (3) Letters of Credit shall be treated as having a market value equal to their face amount for purposes of the SAFE Program. U.S. Dollar-denominated cash collateral representing proceeds from any draw on a Letter of Credit shall be valued at the face value thereof.
- (4) Collateral unable to obtain a current market value by the pricing service utilized by SAFE is deemed ineligible collateral and must be substituted immediately.

Author: Daria S. Story, SAFE Division, Office of State Treasurer

Authority: Sections 41-14A-5 and 41-14A-6, Code of Alabama 1975, as amended.

History: May 2, 2001; Amended: October 24, 2002; February 27, 2004

#### **892-X-1-. 07 Custodians.**

- (1) Each custodian designated by a QPD pursuant to a Collateral Agreement ("Custodian") shall be a bank, savings association or trust company that:
  - (a) Is organized and existing under the laws of the State of Alabama, any other state of the United States, or the United States.
  - (b) Has executed a Collateral Agreement in the format prescribed by the SAFE Board and detailed in the Appendix.
  - (c) Agrees to be subject to the jurisdiction of the courts of this state, or of courts of the United States which are located within this state, for the purpose of any litigation arising.
  - (d) Has been approved by the Treasurer to act as a custodian.
  - (e) Upon request from the Treasurer, provides a confirmation of securities pledged to the Treasurer by each QPD that includes the following information:
    1. Full name and location of QPD;
    2. Full description of securities pledged to the Treasurer;
    3. The signature, printed name, title, address and telephone number of the person authorized on behalf of the custodian to prepare and validate the confirmation.
  - (f) Agrees to provide financial information to the Treasurer upon request.
- (2) Financial institutions which exercise trust powers may hold collateral (other than Letters of Credit and the proceeds from any draws on any Letters of Credit) as security for deposits situated in that financial institution through its trust division.
- (3) The Treasurer shall, from time to time, designate one or more custodians a Treasurer-Designated Custodian to perform such functions as the Treasurer shall determine are appropriate and desirable in connection with the administration of the SAFE Program, including without limitation to receive and hold, subject to the Treasurer's instructions, proceeds from any draw on a Letter of Credit that are not paid directly to the Treasurer and deposited to the Loss Payment Fund. Each

Treasurer-Designated Custodian shall be a bank, savings association or trust company that:

- (a) Is organized and existing under the laws of the State of Alabama, any other state of the United States, or the United States.
- (b) Has executed a Custody Agreement in the format prescribed by the Treasurer.
- (c) Agrees to be subject to the jurisdiction of the courts of this state, or of courts of the United States which are located within this state, for the purpose of any litigation arising.
- (d) Has been approved by the Treasurer to act as a custodian.
- (e) Upon request from the Treasurer, provides a confirmation of funds and securities held by the Treasurer-Designated Custodian pursuant to any Custody Agreements, together with the signature, printed name, title, address and telephone number of the person authorized on behalf of the custodian to prepare and validate the confirmation.
- (f) Agrees to provide financial information to the Treasurer upon request.

(4)

A Custodian may be assessed an administrative penalty or disqualified if it does one or more of the following:

- (a) Fails to execute a Collateral Agreement
- (b) Releases pledged collateral without the Treasurer's approval.
- (c) Fails to provide complete confirmations of pledged collateral within 7 business days.
- (d) Fails to honor a request for examination of funds or securities.
- (e) Fails to pay an administrative penalty.

(5) The following administrative penalties may be enforced upon a Custodian in lieu of suspension or involuntary withdrawal:

(a) Notice of SAFE Violation shall be generated by SAFE

(1) The Notice of SAFE Violation will be issued upon the first occurrence of any action listed in (3) above, and in the following form:

- (i) Issued within 5 banking days of detection of the violation;
- (ii) In written form, providing details of the violation;
- (iii) Providing that fines will be incurred if the violation is not corrected, or if it is repeated within one year of the Custodian's written response;
- (iv) Requiring a written response from the Custodian within 10 banking days of the date of Notice;
- (v) Delivered by fax notice to Custodian with the original mailed.

(2) The Custodian shall prepare a written Response to Notice of SAFE Violation that will:

- (i) Provide a corrective action plan with a timeframe for completion within 30 calendar days; or
- (ii) Provide a statement with substantiating documentation that the infraction has not occurred.
- (iii) Delivered by fax notice to SAFE with original to be mailed.

(3) Written confirmation of receipt will be provided to the Custodian by SAFE.

(b) Notice of SAFE Fine

- (1) A Notice of SAFE Fine shall be issued under the following conditions:
  - (i) The Recurrence of a previous infraction cited by a Notice of SAFE Violation;
  - (ii) No response is received from the Custodian to either the Notice of SAFE Violation or the Notice of SAFE Fine;
  - (iii) The Custodian refuses to correct a violation;
  - (iv) The violation significantly harms the SAFE Program.
- (2) The Notice of SAFE Fine shall be generated as follows:
  - (i) Issued within 5 banking days of the detection of one of the conditions stated in (1) above;
  - (ii) In written form, providing details of the violation;
  - (iii) Providing the amount of the fine to be incurred by the Custodian;
  - (iv) Requiring a written response from the Custodian within 10 banking days of the date of the Notice;
  - (v) Delivered by fax notice to the Custodian with the original to be mailed;
- (3) The Custodian shall prepare a written response to the Notice of SAFE Fine that will:
  - (i) Provide a corrective action plan with a timeframe for completion within 30 calendar days; and
  - (ii) Include payment of fine by check; or
  - (iii) Provide a statement with substantiating documentation that the infraction has not occurred;
  - (iv) Delivered by fax notice to SAFE with the original to be mailed.
- (4) Written confirmation of receipt will be provided to the Custodian by SAFE.
- (c) Fines to be imposed against a Custodian will be as follows:
  - (1) The first Recurrence of a violation shall result in a \$2,500 fine;
  - (2) The second Recurrence of a violation or a violation that causes significant harm to the SAFE Program shall be referred to the SAFE Board for review and assessment of penalty or disqualification as allowed by SAFE Law.

Author: Daria S. Story, SAFE Division, Office of State Treasurer

Authority: Sections 41-14A-2, 41-14A-5, 41-14A-6 and 41-14A-7, Code of Alabama 1975, as amended.

History: May 2, 2001; Amended: October 24, 2002, February 27, 2004

#### **892-X-1-. 08 Requirements of QPDs**

In addition to other requirements specified by the SAFE Program, each QPD shall:

- (1) Administer internal and external audit review for compliance with SAFE Program Rules and statutes to ensure that applicable accounts maintained for public entities and public officials are adequately identified as public deposits on its record by name, address, and federal employer identification number.
- (2) Annually, prior to November 1<sup>st</sup>, provide a report as of the last business day of September to each public depositor that summarizes their deposit account

relationship. This report shall be in addition to regular statements and shall include an indication to public depositors the purpose of the report and that the following accounts are designated as public deposits subject to the SAFE Program. The report shall be deemed correct unless the public depositor notifies the depository to the contrary within 60 calendar days of receipt of the statement.

- (3) Submit to the Treasurer electronically via the SAFE WEB internet reporting system a a monthly report
- (4) Upon request, submit to the Treasurer a copy of the Consolidated Reports of Condition and Income or a copy of the Thrift Financial Report, whichever is appropriate.
- (5) Upon request, submit to the Treasurer its Annual Report and proxy statement.
- (6) Upon request, provide public deposit verifications in a manner required by the Treasurer.
- (7) Permit, during office hours, the Treasurer to inspect, verify, and review all documents, reports, records and all other financial information deemed necessary by the Treasurer to verify compliance with the SAFE Program.
- (8) Provide additional financial information as requested by the Treasurer.

Author: Daria S. Story, SAFE Division, Office of State Treasurer

Authority: Sections 41-14A-3, 41-14A-5, 41-14A-6 and 41-14A-8, Code of Alabama 1975, as amended.

History: May 2, 2001; Amended: October 24, 2002, February 23, 2006

**892-X-1-. 09 Requirements of Public Depositors.** In addition to other requirements specified in the SAFE Program, each public depositor shall:

- (1) Ensure that their deposits meet the definition of a public deposit and that their deposits are placed in a QPD.
- (2) Verify deposit account information as of the last business day of September from each QPD with which the public depositor maintains deposit accounts. Contact the QPD within 60 calendar days of receipt of the statement if the account information provided is incorrect; otherwise, the information will be deemed correct. The public depositor should contact the financial institution if no confirmation is received.
- (3) Upon notification of the insolvency or default of a QPD, the public depositor shall:
  - (a) Submit to the Treasurer a Public Deposits Claim Form and Agreement, as prescribed by the SAFE Board and detailed in the Appendix, within one hundred twenty (120) calendar days after the date of the official notification from the Treasurer.
  - (b) If requesting partial payment of a claim, provide the Treasurer with written documentation justifying the need for partial payment. A partial payment request may be granted to a public depositor if the loss of funds is deemed critical to the immediate operations of the public entity.

Author: Daria S. Story, SAFE Division, Office of State Treasurer

Authority: Sections 41-14A-2, 41-14A-3, 41-14A-6, and 41-14A-9 thru 41-14A-11, Code of Alabama 1975, as amended.

History: May 2, 2001; Amended: October 24, 2002

#### **892-X-1.10 Exempt Public Deposits.**

- (1) Federal law, as well as Alabama law, requires Alabama public housing agencies to conduct cash-management operations, including the collateralizing of public deposits, strictly in accordance with HUD regulations.
- (2) To the extent that these controlling laws and regulations supersede SAFE Law, public funds deposited by Alabama public housing agencies in QPDs are exempt from reporting and collateralizing requirements under the SAFE Program.
- (3) Deposits of HUD monies other than the housing monies referenced above would continue to be subject to the SAFE Program.

Author: Mickey Daughtry, SAFE Division, Office of State Treasurer

Authority: 42 U.S.C. Section 1437d (a) and 1437h(c); 24 C.F.R. 85.20 Ala. Code §§ 24-1-27(a)(8), 24-1-66(a)(8), 24-1-109, 24-1-34, 24-1-73, and 24-1-113 (2000 Repl. Vol.), Code of Alabama 1975, as amended.

History: February 27, 2004.

#### **892-X-1.11 Public Deposit Changes Greater Than 25%**

##### **(1) 25% Increase in Public Deposits**

In accordance with State Law, a QPD may not accept any public deposit during the month that would increase its Net Average Daily Balance of public deposits for that month by 25 percent or more over the net average daily balance of public deposits reported for the previous month unless it first deposits or has on deposit additional required collateral to secure such increase. The QPD must notify SAFE of the pledge of additional collateral prior to the acceptance of such deposit.

##### **(2) 25% Decrease in Public Deposits**

QPDs that experience a deposit withdrawal during the month that would decrease their Net Average Daily Deposits by 25% or more may be eligible for release of excess collateral if all of the following are met:

- (a) The decrease in net public deposits must be 25% or higher;
- (b) The 25% decrease occurred in a period of seven (7) consecutive banking days or less;
- (c) A fully completed interim monthly report is submitted.

Author: Mickey Daughtry, SAFE Division, Office of State Treasurer.

Authority: Sections 41-14A-3, 41-14A-5, 41-14A-6 and 41-14A-8, Code of Alabama 1975, as amended.

History: New Rule filed January 19, 2006; Effective February 23, 2006.

#### **892-X-1. 12 Assessment Calculation**

When the Treasurer has determined that a default or insolvency has occurred, the loss to public depositors shall be satisfied as governed by Section 41-14A-9, Code of Alabama, 1975, as amended. The assessment ratio calculation shall be computed to four decimal places.

Author Daria S. Story, SAFE Division, Office of State Treasurer

Authority: Sections 41-14A-6 and 41-14A-9, Code of Alabama 1975, as amended.

History: May 2, 2001, Amended February 23, 2006.

### **892-X-1-.13 Grounds for Involuntary Withdrawal, Suspension, or Imposition of Administrative Penalties.**

Grounds for involuntary withdrawal or suspension from the SAFE Program or imposition of administrative penalties include one or more of the following:

- (1) Violation of any of the provisions of the SAFE Program or any rule adopted by the SAFE Board.
- (2) Submission of reports containing inaccurate or incomplete information, or filed past the reporting deadline date.
- (3) Failure to pledge Required Collateral at the appropriate pledging level or at the appropriate time (such as prior to accepting deposits, if applicable).
- (4) Pledging unacceptable collateral.
- (5) Releasing or transferring pledged collateral without approval by the Treasurer.
- (6) Applying for the amendment or replacement of any Letter of Credit without the prior written approval of the Treasurer;
- (7) Failure to pay an administrative penalty or an assessment.
- (8) Failure to allow inspection and verification of any information that the Treasurer determines necessary to verify compliance with the SAFE Program.
- (9) Failure to furnish any agreement, report, form, or other information required to be filed under the SAFE Program, or when requested by the Treasurer.
- (10) Failure to execute or have the Custodian execute a Collateral Agreement prior to using the QPD designated Custodian.
- (11) Failure to give notification to the Treasurer of mergers, consolidations, sales of assets, and similar matters.

Author: Daria S. Story, SAFE Division, Office of State Treasurer

Authority: Sections 41-14A-6 and 41-14A-7, Code of Alabama 1975, as amended.

History: May 2, 2001; Amended: October 24, 2002, February 27, 2004, February 23, 2006.

### **892-X-1-.14 Administrative Penalties - QPD.**

The following administrative penalties may be enforced upon a QPD in lieu of suspension or involuntary withdrawal for violation of any action listed in Section 892-X-1-.13:

- (1) Notice of SAFE Violation.
  - (a) The Notice of SAFE Violation shall have the following form:
    1. Issued within 5 banking days of detection of infraction;
    2. In written form, providing details of the violation;
    3. Providing that fines will be incurred if the violation is not corrected, or if it is repeated within one year of QPD's written response;
    4. Requiring a written response from the QPD within 10 banking days of the date of Notice;
    5. Delivered by fax notice to the QPD with the original mailed.
  - (b) The QPD shall prepare a written Response to Notice of SAFE Violation that will:
    1. Provide a corrective action plan with a timeframe for completion within 30 calendar days; or
    2. Provide a statement and substantiating documentation that the infraction has not occurred.
    3. Delivered by fax notice to SAFE with original to be mailed.
  - (c) Written confirmation of receipt will be provided to the QPD by SAFE.

- (d) Any occurrences of the same violation by the QPD subsequent to the initial Notice but prior to the Resolution Date will not result in additional action by SAFE.
- (2) Notice of SAFE Fine.
  - (a) A Notice of SAFE Fine shall be issued under one or more of the following conditions:
    - 1. The Recurrence of a previous infraction cited by a Notice of SAFE Violation.
    - 2. No response is received from the QPD to either the Notice of SAFE Violation or the Notice of SAFE Fine;
    - 3. The QPD refuses to correct a violation;
    - 4. The violation significantly harms the SAFE Program.
  - (b) The Notice of SAFE Fine shall be generated as follows:
    - 1. Within 5 banking days of the detection of one of the conditions stated in (a) above;
    - 2. In written form, providing details of the violation;
    - 3. Providing the amount of the fine to be incurred by the QPD;
    - 4. Requiring a written response from the QPD within 10 banking days of the date of the Notice;
    - 5. Delivered by fax notice to the QPD with the original mailed.
  - (c) The QPD shall prepare a written response to the Notice of SAFE Fine that will:
    - 1. Provide a corrective action plan with a timeframe for completion within 30 calendar days; and
    - 2. Include payment by check as stated in the Notice; or
    - 3. Provide a statement and substantiating documentation that the infraction has not occurred; and
    - 4. Delivered by fax notice to SAFE with the original to be mailed.
  - (d) Written confirmation of receipt will be provided to the QPD by SAFE.
- (3) The amount of the fine imposed will be determined as follows:
  - (a) Violations considered Non-Willful will be:
    - 1. The first, second, and third Recurrence; and,
    - 2. Fined in the amount of \$250 per violation
  - (b) Violations considered Willful will be:
    - 1. The QPD has not responded to either the Notice of SAFE Violation or the Notice of SAFE Fine; or
    - 2. The QPD responds to either notice that it does not intend to correct the violation; or
    - 3. The fourth Recurrence of the same violation; or
    - 4. The violation is of such nature that it would cause significant harm to the SAFE Program; and,
    - 5. Fined in the amount of \$2,500 for each violation

Author: Daria S. Story, SAFE Division, Office of State Treasurer  
 Authority: Sections 41-14A-7, Code of Alabama 1975, as amended.  
 History: May 2, 2001; Amended: October 24, 2002, February 27, 2004, February 23, 2006

**892-X-1-.15 Involuntary Withdrawal or Suspension.**

- (1) A QPD may be required to withdraw from the SAFE Program pursuant to Section 892-X-1-.11 "Grounds for Involuntary Withdrawal or Suspension".

- (2) An order of withdrawal from the Treasurer shall be mailed to the QPD by registered or certified mail and shall designate the effective date of withdrawal.
- (3) Within the time and in the manner specified in the order of withdrawal, the QPD shall provide the Treasurer a written report listing the names, account numbers, account balances and maturity dates, if applicable, of any public depositors.
- (4) The Treasurer shall provide prompt notification to each public depositor, identified on the list of public deposits accounts described in paragraph (3) above, of the withdrawal of the depository from the SAFE Program. Any public deposits will cease to be protected after the effective date of withdrawal.
- (5) The withdrawing QPD shall provide to the Treasurer, when all public deposit accounts have been closed, a written certification adopted by the Board of Directors that the institution no longer holds any public deposits and will not receive or retain any public deposits until it again becomes a QPD.
- (6) Early withdrawal penalties incurred by public depositors shall be the responsibility of the depository.
- (7) The procedures for withdrawal shall be as set forth in Chapter 22 of Title 41, as amended, and in the rules of the SAFE Board of Directors adopted pursuant to this section.
- (8) The contingent liability of the withdrawing QPD shall remain in effect for a period of twelve (12) months after the certification described in paragraph (5) above has been received by the Treasurer.
- (9) The depository may reapply for qualification after one year from the date of the order of withdrawal.
- (10) The Treasurer shall, upon request, release pledged collateral after the effective date of withdrawal and the certification described in paragraph (5) above has been received by the Treasurer.

Author: Daria S. Story, SAFE Division, Office of State Treasurer

Authority: Sections 41-14A-6 thru 41-14A-8, Code of Alabama 1975, as amended.

History: May 2, 2001; Amended: October 24, 2002, February 27, 2004, February 23, 2006

#### **892-X-1-.16 Voluntary Withdrawal.**

- (1) A QPD may voluntarily withdraw from the SAFE program by giving written notice to the Treasurer at least thirty (30) calendar days before the effective date of withdrawal. Written notice shall be by resolution of the withdrawing depository's Board of Directors and shall designate the effective date of withdrawal.
- (2) The contingent liability of the withdrawing QPD shall continue for twelve (12) months after the certification described in paragraph (4) below has been received.
- (3) The withdrawing QPD is responsible for notifying all of its public depositors that it is withdrawing from the SAFE Program.
- (4) The withdrawing QPD shall provide to the Treasurer, when all public deposit accounts have been closed, a written certification adopted by the Board of Directors that the institution no longer holds any public deposits and will not receive or retain any public deposits until it again becomes a QPD.
- (5) Penalties incurred because of early withdrawal shall be the responsibility of the withdrawing QPD.
- (6) The Treasurer shall, upon request, release pledged collateral after the effective date of withdrawal and the certification described in paragraph (4) above has been received.

Author: Daria S. Story, SAFE Division, Office of State Treasurer

Authority: Sections 41-14A-6 and 41-14A-8, Code of Alabama 1975, as amended.  
History: May 2, 2001; Amended: October 24, 2002, February 27, 2004, February 23, 2006

**892-X-1-.17 Effect of Merger or Acquisition.**

- (1) Designation
  - (a) When a non-qualified depository acquires, merges, consolidates, or undertakes other similar transactions with a QPD, the resulting institution automatically becomes a QPD for ninety (90) calendar days and assumes the contingent liability, collateral agreement, required collateral, and reporting requirements of the approved QPD.
  - (b) Should the resulting institution desire to become a QPD, the requirements under Section 892-X-1-.03 "Designation as a QPD" shall be met for participation in the SAFE Program within ninety (90) calendar days.
  - (c) Should the resulting institution choose not to become a QPD, procedures under Section 892-X-1-.14 "Voluntary Withdrawal" from the SAFE Program shall be followed.
- (2) Pledge Level
  - (a) A QPD may obtain an exemption from a change in pledging level in the event a merger or acquisition incurs accounting requirements that cause a material misstatement of the QPD's financial ranking for the most recent quarter. This exemption shall be requested in writing addressed to the Treasurer.
  - (b) An exemption shall be effective for a period of two calendar quarters and require reporting of the QPD's financial condition in addition to the regular monthly report.

Author: Daria S. Story, SAFE Division, Office of State Treasurer  
Authority: Sections 41-14A-6, Code of Alabama 1975, as amended.  
History: May 2, 2001; Amended: October 24, 2002, February 27, 2004, February 23, 2006

**892-X-1-.18 Reports by the Treasurer.**

- (1) The Treasurer shall maintain a current listing of QPD's at its website address [www.treasury.alabama.gov](http://www.treasury.alabama.gov).
- (2) The total amount of all public deposits reported in the SAFE Program shall be available on the Treasurer's website. The amount shall be updated quarterly and shall include the calculated 20% concentration level based on Net Average Public Deposits at the end of the quarter.

Author: Daria S. Story, SAFE Division, Office of State Treasurer  
Authority: Sections 41-14A-4 and 41-14A-6, Code of Alabama 1975, as amended.  
History: May 2, 2001; Amended: October 24, 2002, February 27, 2004, February 23, 2006

**892-X-1-.19 Use of Letters of Credit as Eligible Collateral.**

- (1) A QPD may apply for approval from the Treasurer to use Letters of Credit in connection with satisfying the QPD's Collateral-Pledging Requirement by

completing, signing and submitting a Letters of Credit Agreement Governing Use (the "LC Agreement"). The appropriate form of Collateral Agreement, Contingent Liability Agreement, Certification(s) of Adoption of Directors' Resolution, and Authorized Representative(s) and Signature Certification specified in Rule 892-X-1-.19 must be on file with the Treasurer. The use of Letters of Credit by a QPD will be subject to all of the terms and conditions of the LC Agreement, the provisions and requirements of the SAFE Program Act, Rules and any additional requirements, conditions and limitations prescribed by the Treasurer.

- (2) Each Letter of Credit issued and delivered to the Treasurer shall:
  - (a) be irrevocable and unconditional;
  - (b) have an initial expiration date that is not sooner than one (1) year from the date of issuance;
  - (c) provide that the expiration date thereof shall be automatically extended, without amendment, for successive one (1) year periods from the then applicable expiration date unless the issuer of the letter of credit shall have notified the Treasurer in writing not less than ninety (90) days prior to the then applicable effective date that the issuer has elected not to extend the expiration date for the additional period;
  - (d) permit multiple and partial drawings; and
  - (e) shall otherwise be in a form approved by the Treasurer.

The Treasurer may obtain certificates of incumbency from each LOC issuer periodically to verify the signature authority of officers who execute Letters of Credit.
- (3) Changes in the terms of Letters of Credit shall be made in the form of an amendment. All amendments to the Letter of Credit shall be subject to the prior written approval or disapproval of the Treasurer and shall be in form and content acceptable to the Treasurer. The QPD shall be responsible to make appropriate application to the LOC issuer for any amendment approved by the Treasurer. Unless otherwise approved by the Treasurer in writing, Letters of Credit may not be amended more than six (6) times during each twelve-month period.
- (4) The Treasurer shall have the unconditional right, without further proceedings and without notice of any kind to the QPD or any other person (other than the LOC issuer ) to draw, in whole or in part, and in either single or multiple drafts, on any or all Letters of Credit held by the Treasurer at any time prior to the expiration of the Letter of Credit if the Treasurer, in his or her discretion, determines that it is necessary to draw on the Letter of Credit, including by way of example but not limited to, upon any of the following:
  - (a) Any Default or Insolvency, as defined in Section 41-14A-2(7) of the Code of Alabama, shall occur with respect to the QPD;
  - (b) The QPD violates or fails to comply with any of the terms or requirements of the LC Agreement, the QPD's Contingent Liability Agreement, the Collateral Agreement or any other agreement or instrument executed by the QPD in connection with the SAFE Program;
  - (c) There shall occur any event or circumstance which constitutes grounds for any involuntary withdrawal or suspension of the QPD from the SAFE Program or for the imposition of administrative penalties against the QPD;
  - (d) The QPD fails to have on deposit with the Treasurer Required Collateral;
  - (e) The Treasurer receives notification from the LOC issuer that it will not extend the expiration date of any Letter of Credit ; or

- (f) In the case of any Letter of Credit that has a final stated expiration date, the QPD fails to provide to the Treasurer, not less than 30 days prior to the final expiration date, (a) an amendment to the existing Letter of Credit extending its expiration date for at least one (1) year from its then stated expiration date or (b) other Eligible Collateral.
- (5) No cancellation of any Letter of Credit shall be effective until the Treasurer has provided written approval to the QPD and returned the Letter of Credit to the LOC issuer. The QPD shall be responsible to make appropriate written request to the Treasurer and to make the appropriate request to the LOC issuer with the Treasurer's written approval attached.
- (6) No substitution of any Letter of Credit for other Eligible Collateral shall be effective until the Treasurer has received the properly executed Letter of Credit or approved amendment to an existing Letter of Credit. No substitution of any Eligible Collateral for any Letter of Credit shall be effective until Custodian has acknowledged to the Treasurer in writing the Custodian's receipt of the substitute collateral and the Treasurer has returned the Letter of Credit to the issuer.

Author: Daria S. Story, Chief Operating Officer, Office of State Treasurer  
Authority: Sections 41-14-35, 41-14A-2 and 41-14A-6, Code of Alabama 1975, as amended.  
History: March 1, 2004, February 23, 2006

#### **892-X-1-.20 Board of Directors**

(1) A representative of an active QPD, a municipality, or county nominated for board appointment shall be a salaried employee of that entity with expertise in the SAFE Program, and the entities' general and financial operations.

- (2) With respect to an appointed board member's term of service:
  - (a) A member's term shall begin at the meeting following his/her appointment. Each member shall remain until his/her term expires, death, resignation, or his/her successor has been appointed.
  - (b) No board member may serve more than two consecutive four year terms. Completion of a partial term will not be considered a full term.
  - (c) Any board member may resign at any time from his/her position with the SAFE Board. Notice of resignation shall be provided in writing to the Treasurer. The resignation shall take effect upon date specified in the written notice.
  - (d) Any board member leaving employment with his/her represented entity shall simultaneously resign as a member of the SAFE board. Resignation shall be provided in writing to the Treasurer with a copy provided to the Nominating Authority.

(3) Within one month of notification of a board vacancy, the Nominating Authority shall submit, in writing, a minimum of three nominations to the Treasurer

(4) When selecting the board appointee, the Treasurer may consider factors including but not limited to geographic location and asset size of the financial institution, city, or county.

Author: Mickey Daughtry  
Authority: Section 41-14A-6  
History:

## **Appendix – Description of Forms**

(1) The forms listed and described below are for informational purposes only and are not incorporated by reference or made a part of a Treasury Administrative Rule or this appendix. Copies of the forms may be obtained from the State Treasurer's Office, the SAFE Program or from the Treasury Web Site as indicated in paragraph numbered (2) below. These forms may be replaced, updated, renamed or otherwise modified from time to time as needed by the SAFE Board without the necessity or formality of rule amendment. Copies of the correct versions shall be promptly delivered to the Administrative Procedures Division when changed for placement in the general Treasury file.

(a) "Authorized Representative(s) and Signature Certification" means a written certification wherein a QPD provides the Treasurer with the name, title and signature of any person(s) authorized to represent the depository in any and all matters relating to the SAFE Program.

(b) "Certificate of Qualified Public Depository" means a certification, , issued by the Treasurer to each financial institution that has met all of the necessary requirements in the SAFE Program to accept and retain public deposits.

(c) "Certification of Adoption of Directors' Resolution" means a written document completed by the QPD and signed by the QPD's board secretary certifying the QPD's board has formally adopted all agreements necessary to make application to join the SAFE Program.

(d) "Collateral Agreement" means a written certified agreement executed on behalf of the Treasurer, wherein a QPD agrees to deliver securities qualified as eligible collateral to a custodian which agrees to safe-keep such securities for the primary benefit of the Treasurer.

(e) "Contingent Liability Agreement" means a written certified agreement, , wherein a QPD guarantees public depositors against loss caused by the default or insolvency of any QPD.

(f) "Federal Home Loan Bank Letters of Credit Application for Approval and Agreement Governing Use" (or "LC Application") means a written certified agreement, , wherein a QPD applies to the Treasurer for authority to use Federal Home Loan Bank Letters of Credit in connection with satisfying the QPD's Collateral-Pledging Requirement.

(g) "Public Deposit Claim Form and Agreement" means a written claim, wherein a public depositor describes the details of an uncompensated loss of a public deposit due to the default or insolvency of a QPD, and agrees to the terms of the agreement in order to receive payment from the Treasurer.

(h) “QPD Monthly Report” means a certified report, submitted to the Treasurer monthly by each QPD electronically via the SAFE WEB system. The report shall include information relative to public deposits held by the depository, required collateral, and other information as required.

(i) “QPD Interim Report” means a certified report submitted to the Treasurer by a QPD that has experienced a decrease in net average public deposits of 25% or more within a period of seven (7) consecutive banking days or less. The report shall include information relative to the projected balance of public deposits held by the depository, a projected required collateral balance, and amount by which the QPD is over/under pledged, and other information as required.

(j) “Eligible Collateral Listing” means a listing of the types of securities named by the SAFE Act as acceptable for collateral pledging purposes. The Treasurer is authorized to disapprove any security offered or pledged as collateral

(2) Copies of all forms listed in subsection (1) above may be obtained through the Office of State Treasurer, P.O. Box 302510, Montgomery, AL 36130-2510, telephone (334) 242-7500; from the SAFE Division, telephone (334) 353-3927, or by visiting the Treasurer’s website at <http://www.treasury.alabama.gov> to select the SAFE Program from the list on the left side of the web

Author: Daria S. Story, SAFE Division, Office of State Treasurer

Authority: Sections 41-14A-1, et seq, Code of Alabama 1975, as amended.

History: May 2, 2001; Amended: October 24, 2002, February 27, 2004, February 23, 2006